Mar 3 2000

(11)

No. 99-401

Supreme Court, U.S.
FILED
MAR 03 2000
CLERK

In The

Supreme Court of the United States

CALIFORNIA DEMOCRATIC PARTY, *et al.*,

Petitioners,

v.

BILL JONES, SECRETARY OF STATE OF CALIFORNIA, *et al.*,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF OF AMICUS CURIAE NORTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL, DR. JOHN K. WHITE, PROF. BARBARA NORRANDER, PROF. DAVID TABB, DR. GARY L. ROSE, DR. DAVID K. RYDEN, DR. RICHARD DELEON, PROF. ROBERT C. SMITH, DR. JAMES FAY, DR. RONALD WALTERS AND MR. RICHARD WINGER, IN SUPPORT OF PETITIONERS

E. Mark Braden
Counsel of Record
Baker & Hostetler
1050 Connecticut Avenue, N.W.
Suite 1100
Washington, D.C. 20036
(202) 861-1500

Counsel For The Committee For Party Renewal, et al.

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

2488

TABLE OF CONTENTS

	Page
INTERESTS OF AMICI CURIAE	1
SUMMARY OF ARGUMENT	2
PLEADING	5
I. A Consensus Of Political Science Research And Analysis Support A Reading Of The First Amendment That Protects The Right Of Political Parties To Choose Their Own Nominating Structure	5
II. Including Or Excluding Independents And Members Of Other Parties From A Party's Primary Electorate Does Make A Difference	7
III. The Appropriate Structure For A Party's Nominating Process Is A Complex Political Decision Dependent On Variables of Time, Place, Political History And Goals	9
IV. Political Parties Play A Unique And Crucial Role In Our Democratic System Of Government, Which Is Damaged By The Mandated California Blanket Primary	15
CONCLUSION	18

TABLE OF AUTHORITIES

Page

FEDERAL CASES

Baker v. Carr, 369 U.S. 186 (1962) 11

Buckley v. Valeo, 424 U.S. 1 (1976) 13

Cousins v. Wigoda, 419 U.S. 477 (1975) 3

Davis v. Bandemer, 478 U.S. 109 (1986) 16

Democratic Party of the United States v. Wisconsin ex rel. La Follette, 450 U.S. 107 (1981) 3

NAACP v. Alabama ex rel. Patterson, 357 U.S. 449 (1958) 14

New York Times Co. v. Sullivan, 376 U.S. 254 (1964) 13

Republican Party of Conn. v. Tashjian, 770 F.2d 265 (2d Cir. 1985) 6

Tashjian v. Republican Party of Conn., 479 U.S. 208 (1986) 2, 3

Williams v. Rhodes, 393 U.S. 23 (1968) 6

MISCELLANEOUS

David Adamany, *Crossover Voting and the Democratic Party's Reform Rules*, 70 Am. Pol. Sci. Rev. 536 (1976) 7

John H. Aldrich, *Why Parties?* (1995) 4, 15

Am. J. Pol. Sc. 33 (1989) 10

American Political Science Association, Committee on Political Parties, *Toward a More Responsible Two-Party System* (1951) 10

TABLE OF AUTHORITIES – Continued

Page

Peter Aranson and J. Ordeshook, *Spatial Strategies For Sequential Elections In Probability Models Of Collective Decision Making* (1972) 13, 14

V. Blasi, *The Checking Value in First Amendment Analysis*, 1977 Am. B. Found. Res. J. 521 13

James Burns, *The Power To Lead* (1984) 6

C. Charles, *The Origins of the American Party System* (1956) 8

Kevin Cunningham, *The Jeffersonian Republican Party*, in 1 *History of United States Political Parties* (A. Schlesinger, Jr. ed., 1973) 8

Frank Dallinger, *Nominations for Elective Office in the United States* (1897) 8

Leon Epstein, *Will American Political Parties be Privatized?*, J.L. & Pol., Winter 1989 8

John Geer, *Rules Governing Presidential Primaries*, J. Pol. 48(4) 11

Stephen Gottlieb, *Rebuilding the Right of Association: The Right To Hold A Convention As A Test Case* 11 Hofstra L. Rev. 191 (1982) 7, 8, 13

Ronald Hedlund, *Crossover Voting in a 1976 Open Presidential Primary*, 41 Pub. Opinion Q. 498 (1977-78) 7

Ronald Hedlund, et al., *Voting in an Open Primary*, 10 Am. Pol. Q. 197 (1982) 7

Xandra Kayden and Eddie Mahe, *The Party Goes On* (1985) 12

V. O. Key, *American State Politics* (1956) 9, 13

TABLE OF AUTHORITIES – Continued

Page

V.O. Key, Jr., *Politics, Parties, and Pressure Groups* (1942) 18

Jeane Kirkpatrick, *Dismantling the Parties* (1978) 7

James Madison, *The Federalist*, No. 10 .....4, 9

N. Nie et al., *The Changing American Voter* (enlarged ed. 1979) 7

Barbara Norrander, *Explaining Cross-State Variation In Independent Identification*, Am. J. Pol. Sc. 33 (1989) 10

Nelson Polsby, *Consequences of Party Reform* (1983) 6

Gerald Pomper, *The Contribution of Political Parties to American Democracy*, in *Party Renewal In America* (1980) 7

Austin Ranney, *Turnout and Representation in Presidential Primary Elections*, 66 Am. Pol. Sci. Rev. 21 (1972) 7

Clinton Rossiter, *Parties and Politics in America* (1960) 4

A. Scalia, Commonsense, Volume 4, Number 2, *Conference on the Parties and the Nominating Process, Legal Framework for Reform* (1982) 2

E. E. Schattschneider, *Party Government* (1940) 19

E. E. Schattschneider, *Party Government* (1942) 6

John White and Jerome Mileur, *Challengers To Party Government* (1992) 18

John White and Daniel Shea, *New Party Politics: From Jefferson and Hamilton to the Information Age* (1998) 12

C. Wood, *The Creation of The American Republic, 1776-1787* (1979) 10

INTERESTS OF AMICI CURIAE[1]

The Northern California Committee for Party Renewal is a voluntary, bipartisan association of political scientists and practitioners committed to strengthening political parties in the United States. Since its inception in 1975, the Committee has worked towards revitalizing and rebuilding political parties. This effort is founded in the belief that political parties are essential to unity and give coherence to the American political system, and to maintain an effective democracy. As part of its goal, the Committee has urged that minor political parties, as well as the two major parties, be able to compete freely in U.S. elections.

Dr. John K. White is a professor of political science at the Catholic University of America, Washington, DC and co-author of *New Party Politics: From Hamilton and Jefferson to the Information Age*; Barbara Norrander is a professor of political science at the University of Arizona; David Tabb is a professor of political science at San Francisco State University; Dr. Gary L. Rose is a professor of political science at Sacred Heart University; David K. Ryden, Ph.D., J.D., is an assistant professor of political science at Hope College; Dr. Richard Deleon is a professor of political science at San Francisco State University; Robert C. Smith is a professor of political science at

---

[1] All parties in this matter have consented to the filing of this Amicus Curiae Brief, as evidenced by letters of consent lodged with the Clerk. This brief was not authored, in whole or in part, by any counsel for a party. No person or entity, other than the amicus curiae, made a monetary contribution to the preparation or submission of this brief.

San Francisco State University; James Fay, Ph.D., is an attorney and a former professor of political science at California State University at Hayward; Dr. Ronald Walters is a Distinguished Leadership Scholar, Director, African American Leadership Institute, and professor of government and politics at the University of Maryland College Park, and Mr. Richard Winger, editor of Ballot Access News.

These political scientists believe that political parties play a vital role in maintaining a strong, effective representative democracy in our country.

SUMMARY OF ARGUMENT

The Amici professors share the views of then Professor Antonin Scalia that as "an original matter" we can " . . . see no reason why the government should be any more able to tell the Republican Party how to choose its leaders than to tell the Mormon Church how to select its elders."[2]

This is not now an original matter. Supreme Court precedent requires that the California blanket primary be invalidated by this Court. This Court concluded that Connecticut's enforcement of a state-mandated closed primary system burdened the First Amendment rights of the Connecticut Republican Party.[3] The Amici cannot understand how this Court could now conclude, consistent

[2] A. Scalia, Commonsense, Volume 4, Number 2, *Conference on the Parties and the Nominating Process, Legal Framework for Reform* (1982).

[3] *Tashjian v. Republican Party of Conn.*, 479 U.S. 208 (1986).

with that decision, that California's enforcement of its blanket open primary system does not similarly burden the First Amendment rights of the California Democratic and Republican Parties.

In fact, a mandated blanket open primary system is a greater burden on political parties' First Amendment association rights than the Connecticut mandated closed primary system.[4] Surely, it is more intrusive for the state to require political parties to include independents and members of opposing parties in a party's nomination process than requiring a party to restrict itself to its self-identified membership for nominating purposes. Additionally, the constitutionally infirmed Connecticut process did not purport to regulate part of a political party's national convention and presidential nomination process. This Court has repeatedly rejected state regulation of the presidential nominating process if, as here, it is in conflict with national political party rules.[5]

This Court should heed the advice of James Madison on the question of "factions" or "parties":

> There are again two methods of removing the causes of faction: the one, by destroying the liberty which is essential to its existence, the other, by giving to every citizen the same opinions, the same passions, and the same interests . . . It could never be more truly said than on the first remedy, that it was worse than the

[4] *Tashjian*, 479 U.S. at 234-37 (Scalia, J., Dissenting).

[5] *Democratic Party of the United States v. Wisconsin ex rel. La Follette*, 450 U.S. 107 (1981); *Cousins v. Wigoda*, 419 U.S. 477 (1975).

> disease. Liberty is to faction what air is to fire, an aliment without which it instantly expires. But it could not be less folly to abolish liberty, which is essential to political life, because it nourishes faction, than it would be to wish the annihilation of air, which is essential to animal life, because it imparts to fire its destructive agency.[6]

The essence of the First Amendment is the protection of liberty. The California blanket primary restricts the liberty of political parties in the choice of their leaders through restricting their nomination process. Just as a fire without air will expire, so too will a political party prohibited from the liberty of freely choosing its candidates. A political party unable to freely choose its leaders will cease to be a political party.

There is "no America without democracy, no democracy without politics, and no politics without parties."[7] These opening words from Clinton Rossiter's work on American political parties are as true today as when they were first written forty years ago. There is not a true democracy in the world that does not have free and active political parties. In the view of most political scientists, parties are the most important instruments for achieving effective democracy.[8] The California blanket primary severely damages the ability of political parties

---

[6] *The Federalist*, No. 10 (James Madison).

[7] Clinton Rossiter, *Parties and Politics in America* (1960).

[8] *See, e.g.*, John H. Aldrich, *Why Parties?* 18 (1995).

to fulfill their important role in our representative democracy.

PLEADING

I. A Consensus Of Political Science Research And Analysis Support A Reading Of The First Amendment That Protects The Right Of Political Parties To Choose Their Own Nominating Structure.

The fundamental objectives of the First Amendment freedoms of speech, press, petition, assembly and association were to assist citizens in self government and to permit people to thwart an abuse of power by elected leaders and majority public opinion. Reading the First Amendment as permitting the state to deny political parties the right to choose who may participate in the parties' nominating processes would frustrate the purposes of the First Amendment.

The very reason a political party exists is to articulate and fight for the implementation of certain public policies. Those policies, and the principles underlying them, flow from the expressed desires of members of the political party. At the same time, a political party, the policies it espouses, and its candidates are inextricably intertwined. Candidates personify the party, and thus the selection of a candidate is one of a political party's most important functions. As E.E. Schattschneider, a foremost analyst of American political parties has said, "[t]he nominating process thus has become the crucial process of the party. The nature of the nominating procedure determines the

nature of the party: he who can make the nomination is the owner of the party."[9]

Eliminating a party's choice of its own principal leaders, its nominees, deprives it of the opportunity to shape its own political agenda and therefore to engage in the political dialogue in the most useful way. The ability to shape a political agenda is crucial to the parties' roles as collective instruments of First Amendment protected speech. *See* James Burns, *The Power To Lead* 143-45, 235 (1984) (parties serve the public by offering choices).

It is fundamental to the First Amendment that there is no fixed immutable truth – no one position that parties may be expected to expound forever. *Williams v. Rhodes*, 393 U.S. 23, 31-32 (1968); *Republican Party of Conn. v. Tashjian*, 770 F.2d 265, 284-85 (2d Cir. 1985). As circumstances change, the parties must be free to explore the political requisites of that period. *See* Nelson Polsby, *Consequences of Party Reform* 183-85 (1983). Hence any state decision that denies to parties the opportunity to make a political choice affecting the message which it espouses to the public – its nominations and platforms and all that parties stand for – impoverishes public discourse. Freedom of choice for the parties contributes to the American marketplace of ideas.

---

[9] E. E. Schattschneider, *Party Government* 64 (1942).

II. Including Or Excluding Independents And Members Of Other Parties From A Party's Primary Electorate Does Make A Difference.

Independent voters do not merely duplicate the views of the party faithful. *See* David Adamany, *Crossover Voting and the Democratic Party's Reform Rules*, 70 Am. Pol. Sci. Rev. 536 (1976); Austin Ranney, *Turnout and Representation in Presidential Primary Elections*, 66 Am. Pol. Sci. Rev. 21, 33, Tables 8 and 9 (1972); Ronald Hedlund, *Crossover Voting in a 1976 Open Presidential Primary*, 41 Pub. Opinion Q. 498, 502-04 (1977-78); Ronald Hedlund, et al., *Voting in an Open Primary*, 10 Am. Pol. Q. 197 (1982). Members of the Republican Party have different political views than members of the Democratic Party. Libertarian party members have a radically different view of the role of government than Socialist Workers party members. Hence any decision permitting cross-participation affects these parties' agenda, their nominees and platforms.

Parties do more than help to make the ballot manageable. Party nominations also continue to be persuasive with a large percentage of the electorate. *See* N. Nie et al., *The Changing American Voter* 47-73 (enlarged ed. 1979). On the contributions of political parties to the political debate, *see* Gerald Pomper, *The Contribution of Political Parties to American Democracy*, in *Party Renewal In America* 5-10 (1980); Jeane Kirkpatrick, *Dismantling the Parties* 5 (1978); Stephen Gottlieb, *Rebuilding the Right of Association: The Right To Hold A Convention As A Test Case*, 11 Hofstra L. Rev. 191, 208-21 (1982).

The parties are not merely state voting machinery. Endorsements of parties and their predecessors have

been an important part of the political debate since the founding of the Republic. See Frank Dallinger, *Nominations for Elective Office in the United States*, 1-13, 21, 26 (1897); Kevin Cunningham, *The Jeffersonian Republican Party*, in 1 *History of United States Political Parties* 239, 241-42 (A. Schlesinger, Jr. ed., 1973); C. Charles, *The Origins of the American Party System* 83-84 (1956); Gottlieb, *supra*, at 194-95. More public officials are popularly elected in the United States than in any other nation. The parties provide a rational basis for voter decision-making among the myriad known, little known, or unknown individual candidates who run for office in this country. Candidates nominated by political parties represent certain views and philosophies. Although there is a wide range of differences within the major American political parties, party identification has a symbolic meaning for the electorate, and a party platform and goals provide a means of evaluating a candidate. A partyless or party diluted nominating process debases this identification role for the electorate.

A political party is not a public utility simply providing a power grid for candidates' messages. Parties shape the message, and for a state to control any party's central function of nominating is for that state to control the message.[10]

---

[10] *See* Leon Epstein, *Will American Political Parties be Privatized?*, J.L. & Pol., Winter 1989.

III. The Appropriate Structure For A Party's Nominating Process Is A Complex Political Decision Dependent On Variables of Time, Place, Political History And Goals.

The nominating structure mandated by California law and the different structure required by the Democratic and Republican Party rules may each be argued to be valid solutions responding to difficult political questions. There is a time and place for different strategies regarding who should vote in a primary and therefore how the party's political agenda will be shaped. For the parties to play a role in vigorous political debate, they must be free to define their own political agendas.

If the parties perceive a public need to make clearer ideological choices, or a public distaste for the similarity in posture that the major political parties sometimes take, then a closed primary may prove preferable. See V. O. Key, *American State Politics*, 165-96 (1956). One may seek to restrict primary voting to the party faithful in order to sharpen the political debate at a time when the similarity of the two parties prevents the public from taking control at the polls. Without that control at the polls, the public cannot effectively penalize officeholders who fail to live up to their trust, or effectively exercise the right of self-government.

The Framers of the First Amendment, though ordinarily portrayed as fearing "faction", also recognized the importance of cohesive types of political organization for the health of the body politic. See J. Madison, *The Federalist*, No. 10. Although the Framers did not discuss the terms in any detail, they recognized organizations and

forms of representation which were "close to the people" as necessary building blocks of political organization. C. Wood, *The Creation of The American Republic, 1776-1787* 319-28 (1979) (describing the power and ubiquity of popular resort to non-government associations, so-called "factions", that form an honored part of the history of the rights of speech, assembly and association); *Id.* at 189-96 (describing the importance on the eighteenth century mind of delegates' actual representation of the perceived interests of their areas).

The present Republican and Democratic Party rules facilitate that type of policy choice by defining and narrowing the base of political support attracted by the parties. A more narrowly defined portion of the electorate is more able to reach agreement on policies, which can in turn be stated more concretely for the "adherents". A nomination based on that kind of primary contest will tend to present a clearer picture to the general electorate than one emerging from a more broadly based primary. By clarifying positions, this approach serves the process of public discussion protected by the First Amendment and allows the public greater control over the policies pursued by the government, certainly one of the objects of the First Amendment. *See* American Political Science Association, Committee on Political Parties, *Toward a More Responsible Two-Party System* (1951) (for the classic statement of this view). States with closed primaries have fewer independents and more partisans than states with other types of primary laws.[11] It is certainly reasonable to

[11] Barbara Norrander, *Explaining Cross-State Variation In Independent Identification*, Am. J. Pol. Sc. 33 (1989), pp. 516-36.

argue that it is in the best interest of political parties to maintain a larger group of citizens who identify with that party than to encourage political independence.

Political reality is quite complex, and whether these are advantages may depend on one's political goals. Closed primaries can result in major swings between political extremes or a long period of one party dominance, but these implications are not always realized. In general, the closed and open blanket primary models represent a classic confrontation between stability and change, between a primary system driven by cohesive minorities and one driven by broader coalitions. In a time when the public needs "a choice, not an echo", then a narrow definition of the eligible primary voters may prove appropriate. In a time when the public needs an opportunity to pull together, to achieve a broad definition of their common ground, to accomplish common objectives or to vote out the "bad guys", then a broad definition of primary voters may prove appropriate.[12]

These are political questions, not regarding separation of powers as the term is often used by this Court,[13] but are political questions in the sense in which the core of the First Amendment protects the independence of "political answering." In requiring that the parties accept its definition of the primary electorate, the State of California denies the Republican and the Democratic parties a

[12] John Geer, *Rules Governing Presidential Primaries*, J. Pol. 48(4) pp. 1006-25.

[13] See *Baker v. Carr*, 369 U.S. 186 (1962).

tool to accomplish the First Amendment objective of competitive, participatory politics. The public cannot have the benefits of a party choice if through state action a party is required to accept a model the party rejects.

This is of special relevance in the case of minor political parties. Individuals frequently join a minor political party because they support the specific ideology of that party and because they are not satisfied with the Republican or Democratic Party's position on a specific issue. Most members of minor political parties do not expect their candidates to win office, but do expect them to reflect the party's platform position and to articulate on those issues, simulating their membership. The California blanket party system permits people with no interest in the party's specific issues to participate in a minor party's nominating process. Since a minor political party has a comparatively small number of registrants, it takes few non-members to distort its nominating process. American history is littered with minor parties that advance new ideas, only to have those ideas adopted by the major parties. Neither the Whig nor the Democratic parties opposed slavery, but the new Republican Party did; neither Democrats nor Republicans favored the direction of the election of senators, but the Populists did. A minor political party's ability to restrict its electorates to ideological supporters is vital to its continued existence and its historical role of a source of political change.[14]

---

[14] John White and Daniel Shea, *New Party Politics: From Jefferson and Hamilton to the Information Age* 264-299 (1998). Xandra Kayden and Eddie Mahe, *The Party Goes On* 143-145 (1985).

The First Amendment was, and is, intended to permit the public to govern itself by conducting a critical examination of all choices of policy and personnel affected by the election process. *Buckley v. Valeo*, 424 U.S. 1, 14 (1976); *See also* V. Blasi, *The Checking Value in First Amendment Analysis*, 1977 Am. B. Found. Res. J. 521, 523-67. Rather than encouraging a marketplace of ideas, restriction on party organization restricts the consideration and ultimate presentation of points of view embedded in a party's nominations, platform and campaign. Candidates must consider the relevant electorate in designing their positions and appeals. Thus differently constructed parties are likely to call for different arguments. See Peter Aranson and J. Ordeshook, *Spatial Strategies For Sequential Elections in Probability Models of Collective Decision Making* (1972). Moreover, as different party electorates would make different choices, the party would come to stand and argue for different political solutions to public problems. *See* V. O. Key, *American State Politics* 165-96 (1956). Hence restricting a mechanism of party decision-making results in restricting the form of political expression based thereon.

The First Amendment must be read to protect effective political speech. *See New York Times Co. v. Sullivan*, 376 U.S. 254, 275 (1964). The right of assembly was provided not merely to satisfy the desire of people to gather in a public square, but because it was through the organization of the public that the people could work its will on its representatives. *See* Gottlieb, *supra* at 194-96. The scope of the right of association as a derivative of the

speech, assembly and petition clauses must be understood to accomplish the objective of assisting the public in its political chores. *See NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 460 (1958).

It makes a considerable difference whether a party is able to communicate with its membership and its intended audience and determine a common choice or merely guess at the results. If it cannot communicate with its intended audience in order to incorporate their preferences, but must nominate on the basis of some other audience, then the results of that nomination process will be skewed in the direction of other groups included within the state-mandated franchise. Thus the way the party is defined will prove crucial. *See* Aranson and Ordeshook, *supra*. If the government of California can define the party, it will be able to limit the way the party can serve the public.

Because the structure of political association is intimately related to its message, California statutory choice among types of association restricts the parties' messages and thus strikes at the heart of free speech, assembly and association. The issue is not whether an open blanket primary is "better" than a closed primary, but whether a political party or the state has the right to make that decision.

There is an important value in recognizing the right of the parties to make their own choices. They will be rewarded for offering the public that approach which will make them most competitive. They will be penalized for any approach that costs them political and electoral support.

IV. Political Parties Play A Unique And Crucial Role In Our Democratic System Of Government, Which Is Damaged By The Mandated California Blanket Primary.

Parties enable citizens to participate coherently in a complex system of government, allowing for a substantial number of popularly elected offices. They bring fractured and diverse groups together as a unified force, provide a necessary link between the distinct branches and levels of government, and provide continuity that lasts beyond terms of office. Parties also play important roles in encouraging active participation in politics[15], holding politicians accountable for their actions, and encouraging debate and discussion of important issues.

Political parties, as we know them, are an American invention. Parties were not accidents of history. Our earliest political leaders realized that they were essential in bringing order to America's tripartite form of government. Thomas Jefferson and James Madison devised them as means of changing the policy directions of government. *See* John H. Aldrich, *Why Parties?* at 68-95. Later, Andrew Jackson and Martin Van Buren revised them as means of expanding popular participation in government. *Id.* at 97-156. Since the earliest days of our Republic, they have, albeit imperfectly, continued to serve these

---

[15] According to a 1992 study conducted by the National Opinion Research Center and the American National Election Survey (unpublished), persons who were affiliated with the Democratic and Republican Party were more likely to have voted, to be interested in, pay attention to, or care about the results of, the presidential election, than persons unaffiliated with a political party, by significant margins.

ends. Parties are the only broad-based, multi-interested organizations in this country that can recruit candidates for office, mobilize popular support behind them, and organize those elected into a government. Unlike special-interest groups, parties must appeal to majorities in the electorate if they are to win, and unlike single-candidate organizations, they must win many races if they are to govern. Parties, moreover, give a coherence to American politics. We have a constitutional system and a political culture dominated by disunifying forces – separated powers, federalism, pluralism and individualism. Parties have been a unifying force in this system, cutting across the branches and levels of government as well as across voting blocks to aggregate interests, build coalitions and make mass democracy possible.[16]

Individual candidate organizations do not provide the men and women they support with programs or principles. Single issue groups lead to fragmented government, the neglect of broader policy needs, and the neglect of needs of citizens not represented by groups. Political parties, on the other hand, can compromise and incorporate the wishes of a wide range of citizens in programs that encompass a multitude of issues and stretch across a greater time span than a term of office.

---

[16] "There can be little doubt that the emergence of a strong and stable two-party system in this country has contributed enormously to sound and effective government. The preservation and health of our political institutions, state and federal, depends to no small extent on the continued vitality of our two-party system, which permits both stability and measured change." *Davis v. Bandemer*, 478 U.S. 109, 144-45 (1986) (O'Connor, J., concurring).

They can marshal the resources and develop the strategy to recruit, train, support and guide a succession of highly qualified individuals to advance those programs during their terms in office. Political parties provide an effective means of holding elected representatives accountable to the people who elect them on the basis of their parties' programs. They are able to put forward a broad panel of spokespersons in defense of their programs, informing and educating the citizenry in a debate that extends well beyond the short-range electoral prospects of particular candidates.

Only political parties can provide us with the cohesion, continuity and accountability necessary to make democracy work. Political parties are the only broad-based, popular intermediaries between the people and their government. Voters use them to steer government in directions they wish it to go. When political parties work, government works. When they do not, government falters and drifts. Yet, the California system minimizes the importance of our party system, rendering partisan identification procedurally meaningless in nominating.

Political parties, as they evolved in this country, have greater importance than in other Western democracies for a myriad of reasons. In all democratic nations, political parties have the purpose of controlling and directing the struggle for political power. Political parties in the United States do this, but are also unique in that they provide a framework for the accommodation and consensus development which our political system requires function. The party system, when it operates properly, overcomes the handicaps to governance imposed by the separation of powers and furnishes a common leadership and a bond

of loyalty through which a governor and legislative leaders or the President and Congress work.[17] These bonds are weakened when it is no longer clear that these elected "party" nominees share even the same primary electoral base. The blanket primary disconnects candidates from core party interests and groups to the detriment not only of traditional party structures but of our representative government.

When candidates and parties are interdependent, political responsibility is enhanced. When candidates are not dependent on parties for funds and material support, holding elected officials accountable becomes more difficult. The more a candidate depends on the party, the greater the party's ability to apply its leverage to achieve policy coherence and mobilize party majorities in Congress or a state legislature. Since it is easier to get groups to agree than contentious, independent individuals, national unity and consensus are more attainable when parties are strong.[18]

CONCLUSION

"Without parties there can be no organized and coherent politics. When politics lack coherence, there cannot be accountable democracy. Parties are indispensable to the realization of democracy. The stakes are no less than that . . . Modern democracy is unthinkable save in

[17] V.O. Key, Jr., *Politics, Parties, and Pressure Groups* (1942).

[18] See generally, John White and Jerome Mileur, *Challengers To Party Government* (1992).

terms of parties."[19] These assertions represent the overwhelming consensus of those who study American Politics. If we understand the essential role of healthy parties in our political system, then, at the very least, one of the goals in governmental regulation of our electoral system should be preserving the vitality and health of our political parties. The California mandated blanket primary significantly impairs the long-term health of our political parties. The decision as to what options are best to maintain the important, vital functions of our political parties must rest with the parties themselves. The power to define includes the power to destroy. If a political party is to fail, it must not be as a consequence of a choice mandated by the state.

Respectfully submitted,

E. Mark Braden
(*Counsel of Record*)
Baker & Hostetler LLP
1050 Connecticut Avenue, N.W.
Suite 1100
Washington, DC 20036
(202) 861-1500

[19] E. E. Schattschneider, *Party Government* 1 (1940).